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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/029,663	12/18/2001	Frans C.M. van Haastest	41419/VGG/P622	5086
23363	7590	12/29/2003	EXAMINER	
CHRISTIE, PARKER & HALE, LLP 350 WEST COLORADO BOULEVARD SUITE 500 PASADENA, CA 91105			BELL, KENT L	
		ART UNIT		PAPER NUMBER
		1661		8
DATE MAILED: 12/29/2003				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/029,663	HAASTEST, FRANS C.M. VAN
	Examiner Kent L. Bell	Art Unit 1661

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on papers filed 8/18/03

2a) This action is FINAL.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 12/18/01 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. §§ 119 and 120

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

a) The translation of the foreign language provisional application has been received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ .
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .	6) <input type="checkbox"/> Other: _____

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**Status of Application**

Applicant's comments filed August 18, 2003 have been fully considered but are not found persuasive as to the issues set forth in this Office action.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

**Objection to the Drawing**

Applicant states "Applicant will submit replacement drawings in due course upon indication of allowance of claim." on page 3 of the Remarks/Arguments section. The Claim cannot be allowed until drawings which meet the requirements of 35 CFR 1.165(a) are filed as The Claim is directed to the plant as "**Illustrated**" and described (MPEP 1605).

As stated in the previous Office action mailed January 15, 2003, Applicant should provide new photographic illustrations which meet the requirements of 35 CFR 1.165(a).

**Objection to the Disclosure**

**37 CFR 1.163**

The following is a quotation of section (a) of 37 CFR 1.163:

(a) The specification must contain as full and complete a disclosure as possible of the plant and the characteristics thereof that distinguish the same over related known varieties, and its antecedents, and must particularly point out where and in what manner the variety of plant has been asexually reproduced. In the case of a newly found plant, the specification

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must particularly point out the location and character of the area where the plant was discovered.

**35 USC § 112**

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

As specific to United States Plant Patent applications, the specifics of 37 CFR 1.164 (reproduced below) are controlling:

The claim shall be in formal terms to the new and distinct variety of the specified plant as described and illustrated, and may also recite the principal distinguishing characteristics. More than one claim is not permitted.

In plant applications filed under 35 U.S.C 161, the requirements of 35 U.S.C. 112 are limited. The following is a quotation of 35 U.S.C. 162:

No plant patent shall be declared invalid for noncompliance with section 112 of this title if the description is as complete as is reasonably possible. The claim in the specification shall be in formal terms to the plant shown and described.

The disclosure is objected to under 35 CFR 1.163(a) and under 35 U.S.C. 112, first paragraph, because the specification presents less than a full, clear, and complete botanical

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description of the plant and the characteristics which define same per se and which distinguish the plant from related known cultivars and antecedents.

More Specifically:

A. Page 1, lines 5 and 6, As stated in the previous Office action mailed January 15, 2003, The disclosure is objected to under 37 CFR 1.121(e) because the Latin name of the genus and species of the claimed plant and Variety Denomination of the claimed plant should be preceded by a heading as set forth in 37 CFR 1.163(c)(4)(5) and 37 CFR 1.163(d).

Applicant has provided the Variety denomination. Further, applicant has set forth the recitation "The present invention relates to a new Clematis plant.". This recitation does not set forth the Latin name of the genus and species of the claimed plant. As stated above, applicant should set forth in the specification, specifically at line 6, the Latin name of the genus and species of the claimed plant.

B. As stated in the previous Office action mailed January 15, 2003, Applicant should set forth in the specification the Genus and species for the instant plant, to the extent known.

C. Page 2, lines 3-9, As stated in the previous Office action mailed January 15, 2003, In addition, it appears applicant has provided four photographic illustrations and has only described

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two. The two sheets labeled at the top as "Sheet 1 of 2" are not the same and the two sheets labeled at the top as "Sheet 2 of 2" are not the same. Correction and/or clarification is necessary.

D. Page 3, line 27, As stated in the previous Office action mailed January 15, 2003, Applicant should delete "stipples" and insert --stipules--. Correction is necessary.

E. Page 5, lines 25 and 26, Applicant states "Petaloids: The flowers have no sepals, only petaloids". Clematis plants have tepals they do not have petals or petaloids. It appears that the botanical structures applicant is describing as petaloids should actually be termed --tepals--. Applicant should review these botanical structures and make the necessary changes or provide meaningful information showing that the botanical structures are in fact petaloids.

Further, if such is accurate and the term used should be --tepals-- applicant would need to make the necessary change to the term "petaloid" on pages 5-7.

F. Page 7, line 7, As stated in the previous Office action mailed January 15, 2003, Applicant states the flowers are "completely double" then states there are no stamens, styles, etc. "visibly present". The recitation "visibly present" makes it appear that the instant plant may have reproductive organs. Applicant should verify which is the case. If there are no reproductive organs than the specification should state the same. If there are reproductive organs present then

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applicant should set forth in the specification a detailed botanical description for reproductive organs including stigma, styles, stamens, ovary/ies, pistil number (such as quantity, size and coloration of organs) into the specification with reference to the color chart employed. Applicant should also state whether pollen is produced. If pollen is produced, such should be accounted for by setting forth in the specification the amount produced, i.e. scarce, moderate, abundant, and coloration with reference to the employed color chart.

The above listing may not be complete. Applicant should carefully review the disclosure and import into same any corrected or additional information which would aid in botanically identifying and/or distinguishing the cultivar for which United States Plant Patent protection is sought.

**Claim Rejection**

**35 U.S.C. 112, 1st & 2nd Paragraphs**

Claim 1 is rejected under 35 U.S.C. 112, first and second paragraphs as not being supported by a clear and complete botanical description of the plant for the reasons set forth in the Objection to the Disclosure Section above.

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**Comments**

Applicant should note the new amendment format which is now mandatory (Web site stated below).

<http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/revamdtprac.htm>

Applicant should send all correspondence to the following address:

COMMISSIONER FOR PATENTS  
P.O. BOX 1450  
ALEXANDRIA, VA 22313-1450

**Final**

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, THIS ACTION IS MADE FINAL. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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**Future Correspondence**

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Kent L. Bell whose telephone number is (703) 306-3224. The Examiner can normally be reached Monday through Thursday from 6:00 am to 4:30 pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Bruce Campell, can be reached at (703) 308-4205.

The Official fax phone number (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0196.

K. L. Bell

KENT BELL  
PRIMARY EXAMINER

*Kent Bell*